

## The complaint

Miss A complains about Monzo Bank Ltd.

She says Monzo didn't do enough to protect her when she became the victim of a scam and would like it to refund the money that was lost.

## What happened

The details of what happened are well known to all parties, so I won't repeat them in detail. In summary, Miss A made a match with an individual on the dating app Tinder. The individual began talking about their investments and how they were making money from cryptocurrency. They went on to explain how they did it – and offered to help Miss A invest too.

Miss A decided to go ahead, and initially things seemed to be going well, and she received some money back. However, when she then tried to withdraw her funds, she was told she needed to pay more money for tax purposes – after doing so, the promised return of her money did not happen, and Miss A realised that she had been scammed.

By this time, Miss A had made the following payments.

Date	Payee	Payment type	Amount
08/03/2023	Wise	Faster payment	£200
11/03/2023	Wise	Faster payment	£400
12/03/2023	Foris Dax	Faster payment	£5
12/03/2023	Foris Dax	Credit	£680.42 (CREDIT)
13/06/2023	Foris Dax	Faster payment	£2,500
15/03/2023	Foris Dax	Faster payment	£3,150
16/03/2023	Foris Dax	Faster payment	£6,650
17/03/2023	Foris Dax	Faster payment	£6,500
18/03/2023	Foris Dax	Faster payment	£5,000
		<b>Total loss</b>	<b>£23,724.58</b>

Miss A complained to Monzo, but it didn't uphold her complaint. Unhappy, she came to this Service.

Our Investigator looked into things, and thought that the complaint should be upheld in part – but with liability shared between Monzo and Miss A from the point they felt Monzo should have stepped in. Miss A agreed to this, but Monzo did not.

As an informal agreement could not be reached, the complaint has been passed to me to make a final decision.

## What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and

reasonable in the circumstances of this complaint.

Having done so, I've decided to uphold this complaint in part, for broadly the same reasons as our Investigator. I'll explain why.

In broad terms, the starting position at law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account. And I have taken that into account when deciding what's fair and reasonable in this case.

Miss A authorised the payments in question – so even though she was tricked into doing so and didn't intend for the money to end up in the hands of a scammer, she is presumed liable in the first instance.

But this isn't the end of the story. As a matter of good industry practice, Monzo should also have taken proactive steps to identify and help prevent transactions – particularly unusual or uncharacteristic transactions – that could involve fraud or be the result of a scam. However, there is a balance to be struck: banks had (and have) obligations to be alert to fraud and scams and to act in their customers' best interests, but they can't reasonably be involved in every transaction

Taking into account the law, regulator's rules and guidance, relevant codes of practice and what I consider having been good industry practice at the time, I consider Monzo should fairly and reasonably:

- Have been monitoring accounts and any payments made or received to counter various risks, including anti-money laundering, countering the financing of terrorism, and preventing fraud and scams.
- Have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer.
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

In this case, I need to decide whether Monzo acted fairly and reasonably in its dealings with Miss A when she authorised payments from her account or whether it could and should have done more before processing them.

In reaching my decision, I have also considered the Supreme Court's decision in *Philipp v Barclays Bank UK PLC [2023] UKSC 25*.

In that case, the Supreme Court considered the nature and extent of the contractual duties owed by banks when making payments. Among other things, it said, in summary:

- The starting position is that it is an implied term of any current account contract that, where a customer has authorised and instructed a bank to make a payment, the bank must carry out the instruction promptly. It is not for the bank to concern itself with the wisdom or risk of its customer's payment decisions.
- The express terms of the current account contract may modify or alter that position. For example, in *Philipp*, the contract permitted Barclays not to follow its consumer's

instructions where it reasonably believed the payment instruction was the result of APP fraud; but the court said having the right to decline to carry out an instruction was not the same as being under a duty to do so.

In this case, Monzo's terms and conditions gave it rights (but not obligations) to:

1. Refuse any payment instruction if it reasonably suspects it relates to fraud or any other criminal act.
2. It explained that if it blocked a payment, it would let a customer know as soon as possible via one of its usual channels which could be the Monzo app, email phone or mail.

So, the starting position at law was that:

- Monzo was under an implied duty at law to make payments promptly.
- It had a contractual right not to make payments where it suspected fraud.
- It had a contractual right to delay payments to make enquiries where it suspected fraud.
- It could therefore refuse payments, or make enquiries, where it suspected fraud, but it was not under a contractual duty to do either of those things.

Whilst the current account terms did not oblige Monzo to make fraud checks, I do not consider any of these things (including the implied basic legal duty to make payments promptly) precluded Monzo from making fraud checks before making a payment.

And whilst Monzo was not required or obliged under the contract to make checks, I am satisfied that, taking into account longstanding regulatory expectations and requirements, and what I consider to have been good practice at the time, it should *fairly and reasonably* have been on the look-out for the possibility of fraud and have taken additional steps, or made additional checks, before processing payments in some circumstances – as in practice all banks, including Monzo, do.

Having looked at the payments in question here, I think that there could be an argument for Monzo to have got in touch with Miss A when she made the payment for £3,150. But, at the time these payments were made, I think it was reasonable for the bank to take into account a range of factors when deciding whether to make further enquiries of its customer about a particular payment. In this case, the pattern of payments didn't appear that unusual, and Miss A had only just received a credit from the same source she was paying.

However, I do think Monzo should have got in touch with Miss A when she made the payment for £6,650. By this time, the payments were increasing rapidly in value – and were going to a crypto exchange. And while I recognise that not all crypto payments are made as part of a scam – they do carry an elevated risk, which Monzo should be aware of. So, with this in mind, Monzo should have contacted Miss A to check that all was well – the intention being to uncover a fraud or scam, but it didn't do so.

I think that had Monzo got in touch, and questioned Miss A appropriately about what was going on, it would quickly unravelled the scam, and given her an effective warning – and I don't think that Miss A would've ignored such a warning from her trusted bank.

Therefore, I think that Monzo missed an opportunity to stop the scam from this point.

The only thing left for me to consider is if Miss A should bear some responsibility for the loss— and having thought about this carefully, I agree with our Investigator that responsibility for the loss should be shared between Miss A and Monzo from the time I think Monzo should have intervened. I say this because Miss A doesn't appear to have done any research into what she was doing — and invested off the back of advice from an individual she didn't know and had never met after a very short time of meeting them on a dating app and wasn't as careful as she should have been with her money.

### **Putting things right**

Monzo should refund Miss A 50% of the last three payments made. I calculate this to be £9,075.

On top of this Monzo should also pay Miss A 8% simple interest from the date the payments were made until settlement (minus any lawfully deductible tax).

### **My final decision**

I uphold this complaint in part, Monzo Bank Ltd should put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss A to accept or reject my decision before 5 July 2024.

Claire Pugh  
**Ombudsman**